The Office of General Counse



THIS PRESENTATION

IS CLASSIFIED

TOP SECRET//COMINT//

General Principles of Law

(What is the authority to do my job?) **Authority** Principle #1:

(Is the authority restricted in any way?) Restrictions Principle #2

Fourth Amendment Constitution

Protects the right of the people to be unreasonable searches and seizures. secure in their persons, houses, papers, and effects, against

 Requires probable cause for a search warrant.

Supreme Court Cases

Olmstead v. U.S.

(1928)

Katz v. U.S. (1967)

Operation Shamrock: 1945-1975

- NSA received copies of international telegrams to, from, and transiting the U.S.
- Included virtually all international telegrams carried by major telecom carriers.
- In later years, 150,000 telegrams per month reviewed by NSA analysts
- Probably the largest governmental interception program affecting Americans ever undertaken

Project Minaret: 1967-1973 (The Watch List)

- systematically as basis for selecting Names of U.S. persons used messages
- Foreign influence on Domestic Antiwar and Civil Rights Activists

Narcotics Collection: 1970-1973

- -Telephone Links between the U.S. and South America collected
- Used Names of U.S. persons
- Enforcement could not acquire under Title III Obtained Communications that Law

The Problem...

Congressional Inquiries Church/Pike Committees Information TO, FROM, and ABOUT U.S. Citizens was:

Improperly Collected Improperly Retained Improperly Disseminated

Results of Church Committee and Other Investigations

- Termination of illegal collection activities
- Executive Order requiring the establishment of procedures relating to U.S. person information
- Greater Executive and Legislative Oversight

Congressional/Executive Response to IC Abuses

ı Federal Law

Foreign Intelligence Surveillance Act (as amended)

Executive Order

- E.O. 12333
- Intelligence Activities
 - Regulations and Procedures

DoD 5240.1-R and
Classified Annex
USSID SPOO18 (USSID 18)
Minimization Procedures

End of Module One

The Foreign Intelligence Surveillance Act (FISA)

- The FISA, was originally passed in 1978.
- Most recently amended in the FISA Amendments Act (FAA) of 2008.
- Defines "electronic surveillance" and requires an order from the Foreign Intelligence Surveillance Court (FISC) to conduct such surveillance.
- court order to conduct electronic surveillance against US persons either in the US or abroad. As amended, by the FAA, requires that the USG obtain a

Definitions

- Electronic Surveillance
- U.S. Person
- Foreign Power
- Agent of a Foreign Power
- Contents

FISA

"Electronic Surveillance"

- f(1): acquisition of communications of particular known USP inside the US by targeting that person
- f(2): acquisition of wire communication to or from a person in the US if acquisition occurs inside the US
- f(3): acquisition of radio communications if all parties to the communication are located inside the US
- f(4): monitoring in the US to acquire information other than from a radio or wire communication

Definitions -- U.S. Persons

- U.S. Citizen
- Permanent Resident Alien
- (Green Card Holder)
- Corporations (incorporated in the U.S.)
- Associations (primary membership composed of U.S. persons)
- U.S. flagged ships/aircraft

Definitions -- Foreign Power

- A foreign government or any component thereof
- A faction of a foreign nation
- An entity openly acknowledged to be directed or controlled by a foreign government(s)
- a group engaged in international terrorism
- a foreign based political organization

Definitions -- Agent of a foreign power

- An officer or employee of a foreign power
- aider/abettor, or conspirator A spy, terrorist, saboteur,

Definitions -- Contents

Communications

Any information conccerning the identity of the parties to such communications

"Substance"

"Purport"

"Meaning"

"Existence"

Became law in July 2008

Applies to targets overseas

Sections 702/703/704/705

- by targeting foreign persons reasonably believed to Authorizes the USG to gather foreign intelligence be outside the US with authorization jointly executed by the AG and DNI.
- and minimization procedures which comply with the The government must employ targeting procedures statute and which are reviewed by the FISC.
- Prohibits "reverse targeting".

- against a USP reasonably believed to Authorizes "electronic surveillance" be outside of the US, but --
- An order from the FISC is required.
- "agent of a foreign power", or officer or employee of a foreign government. Target must be a "foreign power",

- targeting US persons overseas but Authorizes "other acquisitions"
- An order from the FISC is required.
- The FISC does not review surveillance techniques.

- authorize acquisitions conducted both inside and outside of the US against a USP 705(a) – a judge may simultaneously overseas (703 and 704).
- while the USP is reasonably believed to be authorizing surveillance of target inside of 705(b) – if there is an existing FISA order the US, the AG can authorize targeting outside of the US.

FISA Procedures

- Establishes the Foreign Intelligence Surveillance Court
- Provides criteria/requirements for applications
- Establishes Congressional Oversight

E.O. 12333

United States Intelligence Activities

- responsibilities for the Intelligence Provides goals, directions, and Community
- Defines NSA's responsibilities (Part 1.12(b)
- Requires each agency to have AG- approved procedures, for collection, processing and dissemination of U.S. person information

E.O. 12333

United States Intelligence Activities

- Provides goals, directions, and responsibilities for the Intelligence Community
- Defines NSA's responsibilities (Part 1.7(c))
- Requires each agency to have AG- approved procedures, for collection, processing and dissemination of U.S. person information

E.O. 12333

United States Intelligence Activities

- Collection, Processing, and Dissemination of Signals Intelligence for National Foreign Intelligence Purposes.
- Collection, Processing, and Dissemination Counterintelligence Purposes. for Signals Intelligence for
- SIGINT Support for Military Operations.
- Information Assurance.

REGULATIONS DoD 5240.1-R (1982)

Procedures Governing the Activities of DoD Intelligence Components that Affect U.S. Persons

NSA/CSS Policy 1-23

Procedures Governing the Activities of NSA/CSS that Affect U.S. Persons

End of Module Two

With Sections 703, 704, & 705 Minimization Procedures

U//FOUC Anyone targeting US persons required to read and be familiar with the located outside of the US under FAA is minimization procedures The Overall Classification of this presentation is TOP SECRET//COMINT//

FAA Sections 703, 704, & 705

Activities of the Control of the Con

SECRET//COMINT//

(U) Requirements

FAA Sections 703, 704, & 705

(1) The FAA may authorize collection against:

✓ A US person

Reasonably believed to be outside of the US

To acquire foreign intelligence information

(U) Limitations

NSA Surveillance Under Sections 703, 704, and 705

- (U) NSA CANNOT use FAA authorities to target:
- Anything/Anyone in the US

(U//FOUO) NSA FAA data CANNOT be:

- Accessed without being properly trained on NSA's FAA minimization procedures
- Processed at locations other than those approved by SID

(U) An order from the FISC to target a US person Section 703

- acquisition of stored electronic communications or (U) Authorizes "electronic surveillance" or the reasonably believed to be outside the US stored electronic data
- (U) Authorization for up to 90 days

Section 704

- An order from the FISC to target a US person reasonably believed to be outside the US
- persons overseas (techniques are not described to (U) Authorizes "other acquisitions" targeting US the court)
- (U) Authorization for up to 90 days

Section 705

- (U) Section 705 has two parts, 705(a) and 705(b).
- and a judge to issue a single order authorizing 703 (U) 705(a) authorizes the Government to request, and 704 surveillance
- has already issued an order authorizing electronic surveillance of a US person overseas if the FISC surveillance or physical search against that US (U) 705(b) authorizes the AG to approve person in the US

NSA Minimization Procedures for Collection Under FAA Sections 703, 704, & 705

Winimization Procedures need to be Followed Unless...

- (U//FOUO) To protect US National Security, life or property, or for Law enforcement purposes NSA may deviate from Standard Minimization Procedures with AG approval (coordinate in advance with NSA OGC)
- act in order to protect against immediate threat to human life consult with NSA OGC who must report any such action within 7 days to DOJ U//FOUC) If advance coordination is not feasible and NSA needs to
- (□) If you believe you must deviate from the procedures, YOU MUST GO TO NSA/OGC FIRST!!!!

NSA Minimization Procedures for Under FAA Sections 703, 704, & 705

Collection

- NSA must terminate collection promptly if NSA learns that a targeted US person is located in the US
- Collection against a US person in the US may only be reinstated in accordance with the FISA
- NSA may resume collection if the target departs the US during the life of the order
- Selectors for 704 and 705 surveillances may be tasked

NSA Minimization Procedures Under FAA Sections 703, 704, & 705

Processing

person 's who are not the target of authorized operationally possible, to minimize the risk of returning data concerning unconsenting US U//FOUO) Searches or reviews of collected materials must be designed, to the extent surveillance NSA Minimization Procedures Under FAA Sections 703, 704, & 705

(U) Retention

destroyed upon recognition unless the AG authorizes The following communications shall be retention:

- Inadvertent collection of communications while the target enters the US
- Inadvertent collection of communications in which all the communicants are in the US
- Inadvertent collection of communications in which all the communicants are US persons who are not authorized targets Targeting US persons located outside of the US

🕒 AG Destruction Waiver

Inadvertent Collection:

- All communicants inside the US
- All communicants

 are US person's
 who are not
 authorized targets
- The authorized target is in the US

Data shall be destroyed unless the AG determines that the communication contains:

- Significant foreign intelligence
- Evidence of a serious crime
- Information related to a threat of serious harm to life or property
- Technical information about a communications vulnerability

Targeting US persons located outside of the US

Without AG Destruction Waiver

Inadvertent Collection:

- Of US domestic communications
- Against an unauthorized target

Even without a Destruction Waiver, technical data concerning such communications may be retained for collection avoidance purposes

NSA Minimization Procedures Under FAA Sections 703, 704, & 705

(U) Retention

- (U//FOUO) NSA may retain FAA data in databases for up to 5 years without additional authorization
- authorized foreign intelligence or counterintelligence (U//FOUO) NSA's SIGINT Director may authorize retention for a longer period in response to an requirement

Incident Reporting

U//FOUO) All incidents should be reported at the time of recognition AND again in the IG Quarterly report

(U//FOUO) Incidents include:

- Inadvertent and incidental collection
- Unauthorized targets
- Collection continued on targets inside the US
- Unauthorized access to data:
- By unauthorized personnel
- By untrained personnel
- At non-SID-approved locations
- Inappropriate storage, labeling, or handling

Targeting US persons located outside of the US

Requirements for Data Access

——— To gain access to data both the individual user and the location must be certified

- The user must:
- Complete this training (renewing it every two years)
- Maintain current Annual Intelligence Oversight readings
- Work under DIRNSA's full operational & technical control
- Have a mission need
- The location must:
- Operate under DIRNSA's full operational & technical
- Possess a delegated mission
- Have SID approval for access to FAA data
- Have an established oversight infrastructure

FAA Sections 703, 704, & 705

(U) Where to go for Help

OGC: DL GC FISA

(after hours contact NSOC SOO to get in touch with OGC)

Oversight and Compliance: DL FISATEAM

Targeting Mission Management (TMM): DL OPSDICTS

Documents Available at SV1 Homepage: ('go SV')

- For the Minimization Procedures document
- Comparison charts of 703/704/705 orders
- Specific targets authorized under these sections

USSID SP0018

Legal Compliance and Minimization Procedures

- 12333, and DoD Regulation 5240.1-R as Main body of SPO018 Compilation of they apply to the U.S. SIGINT system responsibilities from the FISA, E.O.
- covers collection, processing, retention, and dissemination

What is "Collection"?

foreign minister, a computer hacker) COMMUNICANT (e.g. a terrorist, a -Targeting a SPECIFIC

MATTER (e.g. nuclear proliferation, Collecting based upon SUBJECT oil sales, economics)

Targeting Specific Communicants SPO018 Section 4

The Four Rules

without Attorney

ษenerai approvai

- No U.S. Persons in the U.S. without a **Court Order**
- No U.S. persons outside the U.S. without a Court Order
- Foreign persons outside the U.S. -- fair game

Targeting by Subject Matter USSID SPO018 Section 5

- Selection terms that:
- have intercepted or
- are likely to intercept
- U.S. Person communications
- MUST BE DESIGNED
- (to the greatest extent practicable under the circumstances)
- to DEFEAT communications that
- do not contain foreign intelligence

Targeting Issues

Presumptions

(If no other information is available)

■In the U.S., then U.S. person

■Outside the U.S., then foreigner

Targeting Definitions

Targeting U.S. Persons

- INADVERTENT (Did not know is a U.S. Person)
- INCIDENTAL (Legitimate foreign target; as a by product NSA acquires U.S. Person information/communications)
- acquire U.S. Person information/communications) REVERSE (Target foreign entity to intentionally

USSID SP0018

Dissemination

- Allow access to non-minimized raw traffic voice/data database
- Provide copy of a non-minimized piece of raw traffic
- Disclose (orally or in writing) the contents of non-minimized raw traffic
- Disclose (orally or in writing) the identity of a U.S. person contained in an NSA product

USSID SPOO18 SECRET/COMINT//20320188 Dissemination

Authorized Recipients of Raw Traffic

THE SIGINT PRODUCTION CHAIN

People who do Oversight of the SIGINT Process People who Manage the SIGINT Process People who Process Raw Traffic People who Collect Raw Traffic People who Retain Raw Traffic

USSID SP0018

Dissemination

Examples of Non-SIGINT Production Personnel

- A Customer in Another Agency (e.g. CIA,
- Another Agency's Liaison Representative to
- Non-SIGINT producing NSA Organizations or Personnel (e.g Security (Q), Personnel (MD))
- **NSA Employees Detailed/Assigned to** Another Agency (e.g. CIA/TMO, IOTC)
- Any person not necessary to Produce the SIGINT Product

End of Module Three

Questions?

- Who is the target?
- U.S. Person or Non-U.S. Person
- Where is the target?
- In the U.S. or Outside the U.S.
- What kind of communications will be collected?
- Private (e-mail, wire, cell, encrypted) or Non-Private
- How will the communications be collected?
- Passively or Actively
- Where will the communications be collected?
- In the U.S. or Outside the U.S., or in International Waters, or from Outer Space

Questions?

Office of General Counsel

(Operations/Intel Law)



NSOC has an attorney on call 24/7!



USSID SP0018 and Raw Traffic Databases

you have questions about this material (U//FOUO)Contact O&C or the OGC if

NSA SID Oversight and Compliance (Database (nsts) Team):

dl u18dbtarget

NSA SID Oversight and Compliance (Reporting (nsts), Team);

dl ussid18

(U//FOUO) Contact O选C or the OGC if you have questions about this material

NSA Office of the General Counsel (Ops):

(nsts)

(for UNIX systems)

dl gcops (for NT users)

(U//FOUO) Module 5

Administration and Background

(U//FOUO) Briefing Lifespan

2 Years – With use of USSID SP0018 sensitive databases

USSID SP0018 sensitive databases 6 Months – Without use of

Why is this training required?

This training covers access to and use of "Raw SIGINT" data and databases.

collection BEFORE the information purposes, per USSID CR1610. nas been evaluated for foreign intelligence AND minimization Raw SIGINT is: Results of

communications, examining messages "Analysts are not permitted ... to roam which are not directly related to their freely in the universe of collected assigned tasks."

-Office of Intelligence Policy and Peview

restricted to those within a SIGINT Production Chain Raw SIGINT access is as defined by USSID CR1610. There is no single "SPC".

assets in the field through the levels from organic SIGINT There are SPCs at various NSA Product Line level.

communications and non-foreign completely innocent U.S. person Raw SIGINT databases contain intelligence information as well To protect the privacy rights of searches of these databases J.S. citizens, Department of are a collection/targeting Justice has determined activity. Database Queries = collection/targeting Dictionary Tasking = collection/targeting

only half the story. USSID SP0018, Protecting U.S. Persons' rights is must also ensure, to the greatest extent possible, that queries only section 5.1 states that analysts target Foreign Intelligence.

Sharing of SIGIMT

In this age of data and information sharing, regulations that prohibit the casual sharing we must remain mindful of the current of SIGINT.

E.O.12333, section 2.3 specifically addresses this.

the SIGINT system for personal If you know someone is using Targeting for Personal Purposes responsibility to report the purposes, YOU have the activity.

Auditing Requirements

SIGINT systems. This auditing meets auditing requirements for certain raw Department of Justice mandates for **USSID CR1610 Annex A details** NSA's operations.

Derivative Databases

database, that derivative database must have the same access, auditing and retention issues that the originating If data is saved into another file or database held

Access and Retention **USSID SP0018, Section 6**

5 Years on-line

Up to 10 years off-line—request for historical searches made to OIPR

Some retention exceptions

Recognizes intrusiveness of SIGINT

FISA Data: Depends upon nature of data -check USSID SP0018, Annex A, and/or call SV

Accountability of Access NSA must account for:

- T. Who uses SIGINT databases
- 2. What purpose
- 3. From what location
- 4. Under what controls

Therefore, accesses must be re-justified if:

- 1. You Change Offices or Mission
- 2. You Change Locations
- 3. You Change Auditors
- 4. Your Account Lapses Due to Inactivity for 90 days

End of Module 5

(U//FOUO) Module 6

Protections and Restrictions

(U//FOUO) How do we protect ourselves?

The best way to protect ourselves and our SIGINT is to play by the rules.

seem, if we fail to adhere to them, the next set No matter how inconvenient the rules may of rules will be far stricter.

things we cannot accomplish within (U//FOUO) There are very few authorities we have and those the existing rules, using the authorities we can receive. (U//FOUO) Each phase of Production (collection, processing, retention, and dissemination) must be:

Accountable Defensible

Repeatable

Retrievable

(C/) Violations of authorities must be reported: 1. at the time of recognition to SID O&C

2. as part of the E.O. 12333 quarterly report to the IG (U//FOUO) If you determine that you have made a targeting mistake: 1. Stop the query as soon as possible

2. Notify your auditor

databases must abide by the same rules (S//SI//) Anyone using NSA SIGINT and authorities as NSA. Access to these databases is restricted to persons operating under DIRNSA authority. (C//) In addition to having a National includes FI, Counter-intelligence and Foreign Intelligence purpose (which Support to Military Operations), the following general rules apply:) Additional authority is required to target:

 U.S. persons (anywhere) or people within U.S. territory (C//) What is a Second Party Person?

definitions of a Second Party person as we In general terms, we apply the same basic apply for U.S. people.

U.S. Identities in SIGINT, Section 9 contains full definitions of each Second Party person.

(U//FOUO) End of Module 6

(U//FOUC) Module 7

Production Guidance

(U//FOUO) Targeting Clarifications Each query is an act of targeting.

necessary. Look out for queries that Start queries narrow; widen as are too broad.

Reasonableness, Not Perfection!



end via dictionaries AND at the keyboard (U//FOUO) Targeting takes place at front with follow-on queries

"AND" and "BUT NOT" will reduce your results "OR" will expand your returns exponentially Choose qualifiers carefully

(S//S//) E-Mail Address Targeting

foreign intelligence targets outside Specific e-mail addresses of valid countries may be

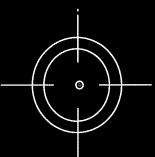
targeted regardless of email domain without additional authority.



E-Wail Address Targeting

Wildcard user names Wildcard domains DO Not





Dissernination Clarifications

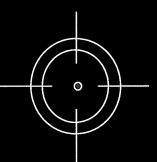
E-mail addresses with U.S. domains may be included in dissemination if:

a. the user is a foreign national (excluding AUS/CAN/NZL/GBR)

who have a specific need for full addresses for b. Information is disseminated only to recipients a lawful government purpose.

| Targeting Clarifications [SITGOTING] //IS//S)

- Permanently assigned?
- Lookup tools BEFORE Check
- the first query
- Defeat domains using the same but not a part of your target
- Do not wildcard



Targeting Clarifications -//is//s)

Avoid general search terms without valid FI selectors

narcotics visa password Bank (Based on USSID SP0018, Sect. 5.1.c)

///S//S)

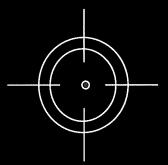
Sole Selectors

Targeting all communications on a will flood you with information that has no FI value or is to/from/about USPs given



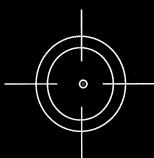
SIGADS as Sole Selectors) Avoid Site //IS//S)

Do you need to see all site, or just select topics? information from a given



) Avoid Names as Sole Selectors

Use locations, associates, or activities to focus searches on anyone with that same name your target and not just



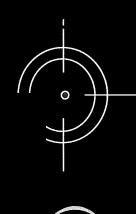
ships or aircraft located in US territoria (C//S///) Targeting foreign flagged Waiters or airspace!

- ELINT to coastline and beyond pursuant -COMINT stops at 12nm without additional authority to USSID AP2231



allowed if specific FI selectors are used as well.

(ex: AND



(C// Dissernination Clarifications

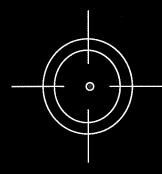
reports, if the focus is on the *product*, Equipment and product designators, not the manufacturer of the product. names may be included in SIGINT , and brand such as

Targeting Clarifications //is//o)

communications devices registered to them Targeting Deceased U.S. People or

a. a VERY strong foreign intelligence requires: purpose

c. approval of the NSA OGC b. mission driver



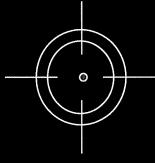
People or communications devices registered to) Targeting Deceased them requires:

a. a VERY strong foreign intelligence

purpose

b. mission driver

c. approval of the appropriate



Dissemination Clarification //si//a)

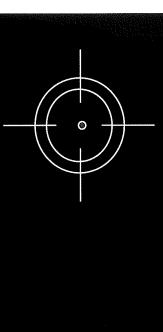
Can deceased protected persons be named in dissemination?

U.S. : YES

Raw Traffic repositories to DO NOT USE //S//S)

verify the protected status

of an entity.



dissemination <u>do not imply</u> listed by name or context in) Protected entities is authorized. collection ///S///S/

(C//) Irnminent Threat to Safety COLLECTION: USSID SP0018, 4.1.d.(1)

from, or about a USP outside the U.S. when life or physical safety is reasonably believed DIRNSA may authorize the collection to, to be in immediate danger.

Contact NSOC

(C//) Dissernination Clarification DISSEMINATION: USSID SP0018, 7.2.c.(6)

safety of any person or organization, including those who are targets, victims or hostages of Information indicates that the identity of the USP is pertinent to a possible threat to the international terrorist organizations. (C// Dissernination Clarification If a person is in imminent danger and

unmasked in product and follow-up you have relevant information, you may disseminate that information with SV afterwards.

Why do we still need this Present Examples level of oversight? **Past Abuses** //3)

targeting of international telegrams

targeting of

Why do we still need this level of oversight? (C//

Past Abuses

Present Examples

Phone lines into the U.S. for identities of U.S. based narcotics smugglers

Restaurant in Texas to identify narcotics smuggler

Why do we still need this Present Examples level of oversight? **Past Abuses** //()

Watch-listing U.S. people for evidence of foreign influence

Unauthorized targeting of suspected terrorists in U.S.

(U//FOUO) End of Module 7

(U//FOUC) Module 8

Dissemination Guidance

(U//FOUO) U.S. location identifiers in reports

used in a LOCATIONAL SENSE (i.e. They Some US identifiers may be included when identify a place).

RESTAURANTS

• HOTELS

• AIRPORTS • AIRLINE FLIGHT NUMBERS

(U//FOUG) Avoid Contextual Identification

Don't provide so much detail about a masked determine who is being referenced due to protected identity that the reader could context.

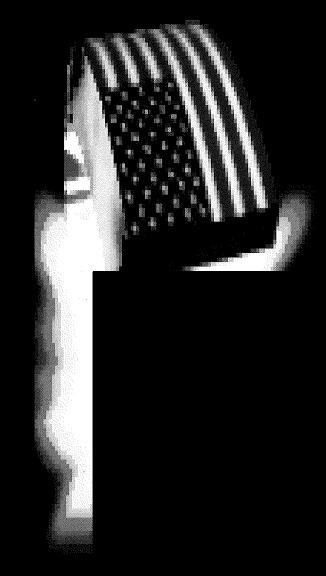
) Dissernination Authority (C//

person or entity in SIGINT product (by name, Generally, to include the identity of a U.S. title, or context):

1) it must be necessary to understand or assess the foreign intelligence, and

- 2) the recipient must need that information to perform his/her official duties.
- 3)You will need the approval of Chief Information Sharing Services.
- 4) Keep your focus on the foreign intelligence.

(U//FOUO) End of Module 8



No chaining from or through U.S. contacts (email, phone, etc.) Contacts Masked







//is//s)

Why do U.S. SIGINT analysis care?

Tasking must comply with (S//Sl// Tasking m USSID SP0018 and

(U//FOUO) End of Module 9